



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9971-91-OCSP]

Production of Confidential Business Information in Pending Litigation; Transfer of Information Claimed or Determined to Potentially Contain Confidential Business Information to the United States Department of Justice and Parties to Certain Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (“EPA”) is providing notice, of disclosure of potential confidential business information in litigation.

DATES: Access by U.S. Department of Justice (“DOJ”) and the parties to litigation to material, including CBI, discussed in this Notice, is ongoing and expected to continue during the litigation discussed in this Notice.

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION: This notice is being provided, pursuant to 40 CFR § 2.209(d), to inform affected businesses that the EPA, via the DOJ, has recently disclosed documents to the parties and the Court in the matter of *National Family Farm Coalition, et al. v. U.S. Environmental Protection Agency and Scott Pruitt*, Case No. 17-70196 (9th Cir.) (the “Dicamba Litigation”), and in the consolidated matters of *National Family Farm Coalition, et al. v. U.S. Environmental Protection Agency and Scott Pruitt*, Case No. 17-70810 (9th Cir.) and

Natural Resources Defense Council v. Scott Pruitt and U.S. Environmental Protection Agency, Case No. 17-70817 (9th Cir.) (the “Enlist Duo Litigation”), that have been submitted to EPA by pesticide registrants or other data-submitters and that have been claimed to be, or have been determined to potentially contain, confidential business information (collectively “CBI”).

In the “Dicamba Litigation,” Petitioners seek judicial review of EPA’s order granting a conditional pesticide registration under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) for the new uses of the herbicide dicamba on genetically engineered cotton and soybean. In the “Enlist Duo Litigation,” Petitioners seek judicial review of EPA’s order granting a conditional pesticide registration under FIFRA of the herbicide “Enlist Duo,” containing the active ingredients 2,4-dichlorophenoxyacetic acid choline salt (“2,4-D”) and glyphosate dimethylammonium salt (“glyphosate”).

The documents are being produced as part of the Administrative Records of the decisions at issue and include documents that registrants or other data-submitters may have submitted to EPA regarding the pesticides dicamba, 2,4-D, and/or glyphosate, and that may be subject to various release restrictions under federal law. The information includes documents submitted with pesticide registration applications and may include CBI as well as scientific studies subject to the disclosure restrictions of section 10(g) of FIFRA, 7 U.S.C. 136h(d).

All documents that may be subject to release restrictions under federal law are designated as “Confidential or Restricted Information” under Protective Orders that the Court entered on November 8, 2017 in both cases (Dkt. 61-2 in the Dicamba Litigation; Dkt. 55-2 in the Enlist Duo Litigation). The Protective Orders preclude public disclosure of any such documents by the parties in this action who have received the information from EPA, unless a party successfully obtains a de-designation as Confidential or Restricted Information of any portion of the

Administrative Record via the procedure described in paragraph 6 of the Protective Orders, and limits the use of such documents to litigation purposes only. Further, paragraph 6(h) of the Protective Orders states: “At any time, the court may de-designate any portion of the administrative record without advanced notice to the parties.” If filed with the Court, such documents would be filed under seal and would not be available for public review, unless the information contained in the document has been determined to not be subject to section 10(g) of FIFRA and all CBI has been redacted. At the conclusion of the litigation, the Protective Orders require that record material EPA designates as “Confidential or Restricted Information” be destroyed or returned to EPA.

Dated: December 7, 2017.

Michael L. Goodis,

Director, Registration Division, Office of Pesticide Programs.

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